

Meeting of 2011-2-22 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
FEBRUARY 22, 2011 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Fred L. Fitch Also Present:
Presiding Larry Mitchell, City Manager
 Frank V. Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Fred Erst, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:19 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Reverend Charles Kriss, Olivett Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
Michael Tennis, Ward Two
Janice Drewry, Ward Three
Jay Burk, Ward Four
Robert Shanklin, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
 Doug Wells, Ward Eight

ABSENT: None

PRESENTATION TO COUNCIL MEMBERS SHANKLIN AND DREWRY.

Mayor Fitch presented plaques to Council members Robert Shanklin and Janice Drewry for their years of service.

AUDIENCE PARTICIPATION: None

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETINGS OF JANUARY 25, 2011, FEBRUARY 8, 2011 AND THE LAWTON CITY COUNCIL SPECIAL MEETING OF JANUARY 31, 2011.

MOVED by Drewry, SECOND by Shoemate to approve the minutes of January 25, January 31 and February 8, 2011. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Tennis, Drewry. NAY: None. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Wells requested item #3 and Shanklin requested item #2 be considered separately.

MOVED by Drewry, SECOND by Tennis to approve the consent agenda with the exception of items #2 and #3. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Tennis, Drewry, Burk. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: Quijada and Vlrike Rodrigo in the amount of \$1,650.00. Exhibits: **Resolution 11-09** and Legal Opinion/Recommendation.
 2. Consider the following damage claim recommended for denial: Bob and Delores Mansell in the amount of \$177.02. Exhibits: Legal Opinion/Recommendation.
- Shanklin stated he does not feel they should kick someone when they are down and he would like to withdraw the item.

Jensen questioned if Council member Shanklin wanted to approve the claim.

Shanklin stated he does not want to approve it he just wants it to go away.

Jensen stated Mr. Mansell has already paid the \$177.02 to release the lien from his property. He stated staff has asked Neighborhood Services Division to check on this property today and the same window that was supposed to be boarded up is not boarded up and a second glass window is broken today.

MOVED by Shanklin, SECOND by Haywood to approve the denial of the claim. AYE: Zarle, Haywood, Wells, Shoemate, Tennis, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED.

3. Consider approving request from the Arts & Humanities Division to pursue applying for a Local Government Challenge Grant from the Oklahoma Arts Council for FY 2011-12. Exhibits: None.

Wells questioned if this was new money or is this something they request every year.

Kim Shahan, Parks and Recreation Director, stated they request this funding every year.

MOVED by Wells, SECOND by Zarle to approve a request from the Arts & Humanities Division to pursue applying for a Local Government Challenge Grant from the Oklahoma Arts Council for FY 2011-12. AYE: Haywood, Wells, Shoemate, Tennis, Drewry, Burk, Shanklin, Zarle. NAY: None. MOTION CARRIED.

4. Consider authorizing the Dan L. Wigington Company to perform a real estate appraisal of City owned property located in the vicinity of 67th Street and Rogers Lane, and identify the funding source for the appraisal of this particular property. Exhibits: Professional Services Agreement is on file in the City Clerk's office.

5. Consider accepting a temporary easement from Wyatt Development Company, Inc. for right of way needed for the NW 82nd Street Sanitary Sewer Project #2010-4 and authorizing the Mayor and City Clerk to execute the document. Exhibits: Document is on file in the City Clerk's office.

6. Consider accepting a temporary easement from Sharon K. & Howard W. Smith for right of way needed for the NW Santa Fe Bridge Replacement Project #2010-2, authorizing the Mayor and City Clerk to execute the document and authorizing payment for the same. Exhibits: Temporary easement is on file in the City Clerk's office.

7. Consider adopting Street Light Resolution No. 469 to authorize the installation/removal of street lights at the location listed in the Resolution. Exhibits: Street Light Resolution No. 469.

8. Consider approval of payroll for the period of February 7 - 20, 2011.

NEW BUSINESS ITEMS:

9. Hold a public hearing and consider an ordinance changing the zoning from R-1 (Single-Family Dwelling District) to P-O (Professional Office District) zoning classification located at 2123 NW Columbia Avenue. Exhibits: Ordinance No. 11-____, Site Plan, Location Map, Application, 2007 CPC and Council Minutes, Petition, CPC Minutes and Schematic Drawing.

Richard Rogalski, Planning Director, stated this request is for Lot 20, Block 3, Morford Addition (approximately 0.25 acre). The applicant and property owner is Richard McLaughlin. The applicant proposes to convert the existing single-family residence to a professional or business office. The zoning of the surrounding area is P-O and C-1 (Local Commercial District) to the north, R-1 to the south and east, and C-5 (General Commercial District) to the west. The land use of the surrounding area is professional office and beauty shop to the north, single-family residential to the south and east, and commercial and apartments to the west across Sheridan Road. The 2030 Land Use Plan designates this lot as Professional Office as well as the other lots between Ferris Avenue and Gore Boulevard on the east side of Sheridan Road. Two applications to change the zoning of this lot were submitted in 1997: one for a day care center, which was denied, and one for an office, which was withdrawn. In 2007 an application was submitted to rezone the property to C-1 for Sue's Beauty Supply. The request was amended to P-O by the applicant with the addition of a Use Permitted on Review request to convert the residential structure to a professional office. The CPC recommended approval of the rezoning and denied the Use Permitted on Review. The City Council denied the rezoning request. He stated the 2030 Land Use Plan does show that lot converting to professional office. A petition against the request was received with 68 signatures; however, only 5 lots within the 300-foot notification area were represented on the petition. On January 13, 2011 the City Planning Commission held a public hearing on this request. During the public hearing two persons spoke in favor of the request, three persons spoke against the request, and one person stated he would not object to the request if there was no driveway on Columbia. The CPC, by a vote of 7 - 0, recommended approval of the rezoning request subject to

following revisions of the binding site plan: 1) modify the sight triangle on the corner of Columbia and Sheridan to meet City Code requirements 2) eliminate the driveway on NW Columbia Avenue 3) eliminate the parking space closest to NW Columbia Avenue 4) correct the labeling of the number of handicapped parking space to one space 5) specify the type of trees to be used for landscaping 6) show all of the lot on the site plan, 7) extend the fence along the east property line to Columbia Avenue at a height of four feet and state on the site plan that the possible uses for the property are uses permitted in the P-O district pursuant to City Code. He stated the fence should be reconstructed as necessary. He stated the applicant has submitted a revised site plan. They have removed the driveway on Columbia, they have identified the trees as Crepe Myrtle trees, they are showing a new proposed new six foot fence along the boundary. They are showing that the fence would extend into the front yard at a height of four feet. The idea is to buffer the property from the adjacent residential neighborhood. Notice of public hearing was mailed on February 1, 2011, to 20 owners of property within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on February 6, 2011.

PUBLIC HEARING OPENED

James Cobb, 2117 NW Columbia Avenue, stated he lives in the home next to this property. He stated this is just a business deal for the applicant, but this involves his home. He stated he has talked with almost everyone on his street as well as the adjacent streets of Dearborn and Morford. Almost all have agreed that they do not want this property rezoned. This will increase traffic on Columbia and Morford and will negatively affect property values and will make their homes nearly impossible to sell. He stated this could be a viable and attractive residence. This home offers a straight shot to Fort Sill as well as shopping and dining within walking distance. He stated there are homes all over town close to traffic much like this home. He stated the real reason the applicant has not been able to sell or rent is because he has not renovated or modernized this house. He has done everything to make this home unappealing as a residence. The applicant purchased this property with the intent of making it a business. He wanted to invest a minimum and reap commercial profits. It is not the City's responsibility to bail him out by allowing him to rezone especially when it hurts the neighborhood. He spoke with a realtor and this area has lost about \$20,000 in the past three years because of the economy.

Wells stated he has been to Mr. Cobb's home and he has spent a lot of money fixing up the interior.

Aaron Cobb, 2117 NW Columbia, stated he is against this rezoning because of the negative impact it will have on city traffic. He is an engineering major and one of the most important skills is the ability to critically evaluate every aspect of a design or idea. He has approached this rezoning the same way as his studies and would like to share his conclusions. Sheridan Road is one of the busiest streets in Lawton and will remain so for the foreseeable future. He stated that according to the Data Report for Fiscal Year 2010 there are no projected improvements for Sheridan Road for the 2030 long range transportation plan. Adding a business on the corner of Sheridan and Columbia would place this business at a location where traffic routinely backs up with no projects being planned to remedy the congestion. He stated six of the top ten intersections with the highest accident rate are located along Sheridan Road. Five out of the six intersections along Sheridan listed in this report are between Cache Road and Gore Boulevard. Sheridan Road and Ferris Avenue has seen a 57% increase in accidents and Sheridan Road and Lake Avenue has seen a 92% increase over the course of three years. Adding a business on this road will increase the risk of every person that uses Sheridan Road. Just two blocks down there are vacant lots that are suitable for commercial development. This lot was never intended to be a business and there are plat restrictions against this rezoning from residential to commercial and building codes would have to be ignored to allow a business at this location in its current state. He urged the Council to consider the big picture.

Betty Foster, 2105 NW Columbia, stated she has lived in her home since 1963. She has enjoyed the stability and peacefulness of this neighborhood. She stated the applicant is again attempting to have this property rezoned. She believes that the applicant only purchased this home to rezone it and make a profit at the expense of those living nearby. She requested the Council maintain residential zoning.

PUBLIC HEARING CLOSED

Shanklin stated the roofline of this home edges over the property line. He is concerned that this building could not be brought up to code to use as a business. He would not want to deny anyone the use of their property, but it would be more feasible and acceptable to the neighborhood to go in and build something new on the property. He would have to deny this request.

Wells stated that in reading the minutes, it is his understanding that staff is recommending against the rezoning unless the building was torn down and a new building was built.

Rogalski stated that yes, that is the staff recommendation.

Wells stated the applicant cannot afford to build a new building. He stated the corner lot to the south has a residence on it that is well maintained. He stated there was a similar situation between Cache Road and Kenyon off of 28th Street. Those two blocks were changed to commercial. Those residents expressed some of the same concerns

and they are just stuck with their homes next to a commercial property and they continue to lose value.

Tenis stated the Council minutes from 1997 validate the point that the applicant purchased this property intentionally to make this a business and after the fact found out there would be a problem. He stated staff has said that this lot could be a professional administrative office, but as new construction which would meet all of the requirements for PO district. He stated when people have lived in that neighborhood since 1963, he has the tendency to lean towards them. He appreciates the tenacity of the applicant, but he cannot agree with this.

MOVED by Shanklin, SECOND by Zarle to deny the request. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Tennis, Drewry, Burk. NAY: None. MOTION CARRIED.

10. Hold a public hearing and consider an ordinance closing the 20-foot alley adjacent to Lots 1 11, Block 9, Industrial Addition, and the 5-foot alleys between Lots 1 11, Block 9, Industrial Addition, located approximately at 410 SE Larrance Street. Exhibits: Ordinance No. 11-____, Application and Location Map.

Rogalski stated on January 11, 2011 the City Council set the date of February 22, 2011 to hold a public hearing on a request to close the 20-foot alley adjacent to Lots 1 11, Block 9, Industrial Addition and the 5-foot alleys between Lots 1 11, Block 9, Industrial Addition. Mr. Forest Derek Pever is the owner of Lots 1 11, Block 9, and the unplatted property to the east of the alley adjacent to these lots. Mr. Pever is selling Lots 1 9 and the unplatted property to the east of those lots. Mr. Pever is retaining Lots 10 and 11 and the adjacent unplatted property to the east of Lots 10 and 11. Mr. Pever will be required to obtain approval of a special subdivision in order to sell the unplatted property and petition district court to have the easements vacated.

Notice of public hearing was mailed to 14 owners of property within 300 feet of the requested area and the private utility companies on January 21, 2011, and a public hearing notice was published in *The Lawton Constitution* on February 6, 2011. No calls or letters have been received opposing the closing of the easements.

Zarle questioned if those were forty foot wide lots.

Rogalski stated they were probably around forty foot.

Zarle stated you would have to have two lots to build on.

Rogalski stated industrial lots do not have the same minimum, so you actually could build on one lot. Even if you had two lots you can not build across because the alleys are in the way.

Mayor Fitch questioned if there were utilities in the alleys.

Rogalski stated that no one has any utilities in the alleys.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Haywood, SECOND by Drewry, to adopt **Ordinance 11-06**, waive the reading of the ordinance, read the title only. AYE: Haywood, Wells, Shoemate, Tennis, Drewry, Burk, Shanklin, Zarle. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 11-06

An ordinance closing the 20-foot alley located adjacent to lots 1 11, block 9, Industrial Addition and the 5-foot alleys located between lots 1 11, block 9, Industrial Addition.

11. Consider suspending Council Policy 1-6, para. 5 (E) and if so suspended, reconsider the damage claim of Rachel Melrose, which was denied by Council on January 25, 2011, to permit Ms. Melrose the opportunity to address Council regarding her tort claim. Exhibits: Copy of Claims Memorandum/Recommendation dated January 3, 2011.

Jensen stated there must first be a motion to suspend the rules to allow the Council to reconsider this claim.

MOVED by Wells, SECOND by Haywood, to suspend Council Policy 1-6. AYE: Wells, Shoemate, Tennis, Drewry, Burk, Shanklin, Zarle, Haywood. NAY: None. MOTION CARRIED.

Haywood stated at the Council meeting on January 25, 2011, Ms. Melrose came up to him and stated that she was in attendance but she was unable to participate in the discussion regarding her claim. He took her to Ms. Fisher and requested that this claim come back to the Council

Kelea Fisher, Assistant City Attorney, stated it is still the staff recommendation to deny this claim. Staff did send Ms. Melrose notice of tonight s meeting. She stated she is not in attendance tonight.

MOVED by Haywood, SECOND by Wells to deny the damage claim of Rachel Melrose. AYE: Shoemate, Tennis, Drewry, Burk, Shanklin, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

12. Consider adopting an ordinance amending Ordinance No. 10-36 authorizing the sale by sealed bid of approximately 50 acres, more or less, of City-owned real property in the vicinity of NW 67th Street and Rogers Lane, the value of the property exceeding Fifty Thousand Dollars (\$50,000), said land being legally described in the ordinance, by adding Section 7 thereto, wherein the proceeds of the sale of all or part of said land shall first be applied to satisfy in full the outstanding balance of a Two Million Five Hundred Thousand Dollar (\$2,500,000) construction/bridge loan obtained by the Lawton Industrial Development Authority on behalf of the City of Lawton to assist in financing the Phase IV Restoration Project for the new city hall. Exhibits: Ordinance No. 11-____.

Jensen stated this ordinance is being proposed to pair up the ordinance that was passed in October, 2010 declaring the 50 acres at 67th and Rogers Lane as surplus and authorizing the sale by sealed bid. They are pairing that up with a \$2.5 million bridge loan by Arvest Bank taken out by the Lawton Industrial Development Authority (LIDA) and approved by the City Council last summer. They are pairing the two up to identify a funding source to pay back the \$2.5 bridge loan by September 2012. He stated the Council received a memorandum from the City Manager to the McMahon Foundation which explained that the McMahon Foundation came to our aid when the bridge loan was secured last summer because there was miscommunication about the collateral given to Arvest Bank to secure that loan. The bottom line is that the loan was in jeopardy until the McMahon Foundation issued a letter of guarantee for the loan and they also made a deposit into Arvest Bank to secure that loan. McMahon Foundation would like to have some assurance that the loan will be paid with the proceeds of the sale of this property. The best way to give them assurances is to add a section to this ordinance which states that the first \$2.5 million of the proceeds from this sale will be paid to satisfy that loan obligation and any outstanding interests. He stated he is asking for two things tonight. One is the passage of this ordinance and the second is to give some direction to bring back a mortgage after the appraisal is done so they can identify one parcel and possibly two that will be put under the mortgage to secure the letter of guarantee and the deposit made by the McMahon Foundation.

Wells stated he feels this is a good thing because we really need to guarantee our loans. He hopes this appraisal is high and they are able to get something nice in his ward.

Mitchell stated that once the ordinance is adopted, staff will proceed with an administrative rezoning and secure an appraisal. Once those two things are done they will bring that information back to the Council along with an RFP to offer the property for sale to the general public. He stated they have met with two groups that have an interest in the property. He feels they can get all of this prepared and ready for bid within the next 60-90 days.

MOVED by Wells, SECOND by Tennis, to adopt **Ordinance 11-07**, waive the reading of the ordinance, read the title only. AYE: Tennis, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 11-07

An ordinance amending Ordinance No. 10-36 authorizing the sale of approximately 50 acres, more or less, of city-owned real property which is hereby declared nonessential and surplus in the vicinity of NW 67th Street and Rogers Lane, the value of the property exceeding fifty thousand dollars (\$50,000), said land being legally described hereinafter, by adding section 7 thereto, wherein the proceeds of the sale of all or part of said land shall first be applied to satisfy in full the outstanding balance of a two million five hundred thousand dollar (\$2,500,000) construction/bridge loan obtained by the Lawton Industrial Development Authority on behalf of the City of Lawton to assist in financing the Phase IV restoration project for the new city hall.

Jensen stated the second request was to ask for direction to bring back the mortgage. He requested consensus from the Council.

Everyone agreed.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Wells stated he received several calls regarding the article in the Sunday paper about streets. They questioned why wards 1, 2, 3 and 5 had several million dollars more in improvements planned than wards 6, 7 and 8. He requested a meeting to inform him of who came up with the list. He stated on the list it showed 53rd from Cache to Gore going to five lanes. He stated that may be in the future, but he does not know when we will ever have the money to do that. They need to be careful are what they put out.

Mitchell stated this is inventory list they work off of that is generated from Public Works. He would guess that since ward 8 is newer than wards 1 and 2, the streets are in better condition. He stated this is a way for staff to index those streets and trying to prioritize. It doesn't mean that those are the only streets they are going to work on, it simply says that right now these are the streets that are in the most critical need of repair. It doesn't mean that is what they are going to spend in each ward.

Wells stated when citizens see the numbers, they don't understand that.

Mitchell stated they will need to reschedule the CIP workshop scheduled for March 1st. The Lawton-Fort Sill Chamber of Commerce Legislative Reception will be held in Oklahoma City on that date. The workshop has been rescheduled for Thursday, March 3rd at 4:00 p.m. in the City Council Chambers.

Mayor Fitch stated that Council member Burk will chair a committee appointed to deal with the landscape ordinance. He stated Rex Givens, Keegan Ledford, Steve Rich, David Denham, Brenda Bentley and Steve Barnes will serve on this committee. They will probably put together an ad hoc committee that will have a lot of property managers. They will come up with recommendations in dealing with Lawton property owners who do not address the needs of their property correctly.

The Mayor and Council convened in executive session at 7:33 p.m. and reconvened in regular, open session at 8:04 p.m. Roll call reflected all members present excluding Shanklin.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

13. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claim of Phyliss Harbert, DC-2010-059, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #13. He stated staff has recommended denial of this claim with no discussion in open session.

MOVED by Wells, SECOND by Burk, to deny the damage claim of Phyliss Harbert. AYE: Shoemate, Tennis, Drewry, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

14. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss filing a foreclosure law suit, in the Comanche County District Court to be styled as City of Lawton v. Auddine Duckett, et al. Exhibits: None.

Jensen read the title of item #14.

MOVED by Drewry, SECOND by Burk, to authorize the City Attorney to initiate and prosecute a foreclosure suite against Auddine Duckett and the real property located at 1402 SW Summit, Lawton, OK, for all sums now due under the promissory note and mortgage dated April 27, 2005 to name as a part in the suit any personal entity having an interest in the property as may be necessary. AYE: Tennis, Drewry, Burk, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

15. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a proposed settlement of the City's claim for reimbursement of expenses resulting from the motorcycle accident of Officer John Foster and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #15. No action is necessary.

16. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2011-2012, between the American Federation of State, County and Municipal Employees (AFSCME) Local 3894, and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #16.

MOVED by Burk, SECOND by Drewry, to appoint Tim Wilson, Bryan Long and Jim Russell as the City's negotiating team for fiscal year 2011-2012 negotiations with the City's AFSCME union and further move to designate Larry Mitchell, Kelea Fisher and all department directors as alternate members of the negotiating team. AYE: Drewry, Burk, Zarle, Haywood, Wells, Shoemate, Tennis. NAY: None. MOTION CARRIED.

17. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the employment of Traci L. Hushbeck as City Clerk, and in open session take other action as necessary. Exhibits: None.

Mayor Fitch read the title of item #17. He stated the recommendation of the Council was an increase in salary.

MOVED by Drewry, SECOND by Burk, to approve a contract with Traci L. Hushbeck as City Clerk with an increase in salary of \$3,000. AYE: Burk, Zarle, Haywood, Wells, Shoemate, Tennis, Drewry. NAY: None. MOTION CARRIED.

FRED L. FITCH, MAYOR
ATTEST: /s/ Fred L. Fitch

/s/ Traci L. Hushbeck
TRACI HUSHBECK, CITY CLERK